

Exhibit 9 (4 pages)
2nd letter (appeal) denial) *appeal denial*



IBM Benefits Center Provided by Fidelity
P.O. Box 770003
Cincinnati, OH 45277-1060

August 28, 2023

Mr. Jurgis Adomavicius
500 Mountain Sunset Lane
Cary, NC 27519-9631

Dear Mr. Adomavicius:

As the Plan Administrator of the IBM Medical and Dental Plans, I conducted a final review of your appeal requesting an exception to allow you to continue to access your HRA without enrolling into a qualifying plan through UHC/Optum. Regrettably, your request must be denied.

The plan provision on which this denial is based can be found in the **HRA And IBM Supplemental Medical Benefit** section of the **About Your Benefits (AYB) – Post Employment** book under **Eligibility for an IBM Subsidy/HRA**. The sub-sections **Special Considerations then When You Will Cease Being Eligible for the IBM Subsidy/HRA**. It states:

For those who would be eligible for an IBM subsidy/HRA if they enrolled in one of the IBM-sponsored options, the requirement to enroll an IBM-sponsored option in order to be eligible for your IBM subsidy/HRA does not apply if, and you will be eligible for an HRA, if:

- Your coverage under the Plan ends because you're Medicare-eligible (either on December 31, 2013, or the later date that you become Medicare-eligible) and at that time you're enrolled in a Kaiser Permanente plan option under the IBM medical plan for active employees or this Plan, you then enroll in individual Kaiser medical or prescription drug insurance coverage, and you maintain this coverage
- You are a Medicare-eligible retiree living outside of the United States or in a United States Territory
- You are a U.S. Veteran as well as a Medicare-eligible retiree who is enrolled in health coverage through TRICARE for Life or eligible to obtain services from the Veterans Administration (VA).
- You are on Medicaid. In these circumstances, you must contact UnitedHealthcare to activate your HRA

In these circumstances, you must contact UnitedHealthcare to activate your HRA.

When You Will Cease Being Eligible for the IBM Subsidy/HRA

You will cease being eligible for the IBM subsidy/HRA on the earlier of:

- The date you are no longer eligible for benefits under the MDIP or lose LTD Leave status as an IBM employee (unless on that date you are otherwise eligible as a retiree)
- The date you are rehired by IBM or any subsidiary of IBM as an active employee (regular or supplemental) and for the duration of your active employment

- The date you cease to be eligible for Medicare (unless your loss of eligibility is due to your living outside of the United States)
- The day after your date of death
- The date you are no longer enrolled in an IBM-sponsored Group Medicare Advantage Plan option (unless special considerations apply)
- The effective date of any amendment terminating your eligibility or
- The date the IBM subsidy/HRA is terminated.

You may not obtain reimbursement of any eligible expenses incurred from your HRA after the date your eligibility ceases. Similarly, you may not obtain reimbursement of any eligible expenses incurred before the effective date of coverage under the IBM-sponsored Group Medicare Advantage Plan. The HRA is administered by Optum, a UnitedHealthcare company.

In your letter, you indicated you should not be required to enroll under an IBM-sponsored Group Medicare Advantage Plan through Optum as they do not offer a prescription only plan comparable to the plan you were enrolled under through Via Benefits. Unfortunately, you are only able to access your HRA funds if you enroll under one of the IBM-sponsored Group Medicare Advantage Plan options or if you meet one of the special circumstances outlined above.

Unfortunately, your decision to not enroll under one of the plans offered by Optum due to the plan options not including a Medicare Prescription plan does not qualify as a reason for you receiving an exception to the plan rules. We will take your suggestion to include a prescription drug only plan while considering future offerings but cannot confirm what types of plans will be offered in the future.

While I empathize with your situation, as the IBM Plan Administrator I must administer IBM's plans according to plan documents and in a manner that is consistent and equitable to all benefit recipients. If exceptions are granted in some cases and not in others, I am not administering the Program in a fair manner.

Please note this is the final step in IBM's appeal process. Please also be aware that because your plan is subject to the Employee Retirement Income Security Act of 1974 (ERISA), you may have the right to bring a civil action under section 502(a) of ERISA to challenge this decision.

If you would like a copy of any other information relevant to this claim, please contact the IBM Benefits Center-Provided by Fidelity at 1-866-937-0720.

Sincerely,

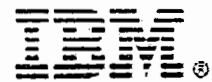
C. Henry

C. Henry
IBM Plan Administrator

cc: Ms. Kayla Dougherty

INQ(111) #
→ EEOC 433-2023-03
1-800-669-4000

DHS → Civil Rights
800-368-1019
www.EEOC.gov



IBM Benefits Center
Provided by Fidelity
P.O. Box 770003
Cincinnati, OH 45277-1060

July 24, 2023

JURGIS A ADOMAVICIUS
500 MOUNTAIN SUNSET LANE
CARY, NC 275199631

Dear JURGIS A ADOMAVICIUS:

This is to acknowledge receipt of your appeal to the IBM Plan Administrator and to let you know that it will be thoroughly investigated. If no additional information is needed to complete the investigation, you can expect to receive a written response from the Plan Administrator within 30 days.

It is possible that additional information may be requested during the course of the investigation. If this should occur, you will be given 45 days to provide the requested information, and your appeal will be suspended during that time. If the requested information is not received within 45 days, the appeal will be decided based on the information we currently have.

I will be your contact during the investigation of your appeal. If you have any questions, you can contact me by calling the IBM Benefits Center Provided by Fidelity at 1-877-208-0936 then my extension which is 23114.

Sincerely,

Kayla Dougherty
IBM Benefits Center
Provided by Fidelity



George Adomavicius <gadamavic@gmail.com>

About Your Benefits – Post-Employment (Summary Plan Description)

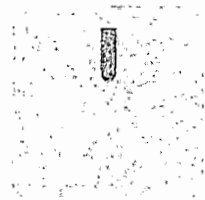
1 message

IBM Benefits Center - Provided by Fidelity <Fidelity.Investments@mail.fidelity.com>

Thu, Jul 27, 2023 at 10:14 AM

Reply-To: Fidelity Investments Unmonitored <reply-fe9217737161017d7c-10_HTML-81374378-1058861-2019@mail.fidelity.com>

To: gadomavic@gmail.com

[View in your browser](#)**IBM Benefits****U.S. BENEFITS****About Your Benefits – Post-Employment (Summary Plan Description)**

Dear JURGIS:

IBM has updated the About Your Benefits - Post-Employment (Summary Plan Description) effective January 1, 2023. This is the Summary Plan Description for IBM benefit plans for which you are eligible. IBM periodically updates and provides this booklet as required. We encourage you to carefully review the *About Your Benefits – Post-Employment SPD* booklet to become familiar with its provisions.

In addition to the link above, the current About Your Benefits - Post-Employment (Summary Plan Description) can be viewed on the NetBenefits® Reference Library or by downloading the free NetBenefits® app to access your account on your mobile device.

You can request a free paper copy of the Summary Plan Description by calling the IBM Benefits Center — Provided by Fidelity.

There is no further action for you to take at this time.

If you have questions, call the IBM Benefits Center — Provided by Fidelity at 866-937-0720 (TTY 711). Representatives are available Monday through Friday (excluding New York Stock Exchange holidays except Good Friday) from 8:30 a.m. to 8:30 p.m. Eastern time.

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Fidelity Investments Institutional Operations Company, LLC
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